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EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/26/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/597,351

Applicant(s)

BUNTE, UWE

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: reference numeral 15. *A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.*

Applicant has stated within the response of September 05, 2002 that "Fig. 4 submitted together with amendment mailed on Feb. 5, 2002" contains the reference sign 15. However, as indicated in the advisory action of March 6, 2002, the proposed drawing correction submitted with the amendment of Feb.. 5, 2002 has not been entered. And, it is not apparent that the drawings on file contain a reference character 15, (the Office action of Nov. 5, 2001 stating that proposed drawing corrections filed on Aug. 13, 2001 had not been entered).

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "inner contour around which said heat-expansible element is retained" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. As for language presented in claim 12, is the heat-expansible element surrounded by an inner contour or is the inner contour surrounded by the heat-expansible element?

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Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The terms “latching opening” and “latching web” do not appear to have antecedent basis within the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5 and 12-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear clear and complete as to “said latching opening being disposed within said inner contour of said first half-shell” or “said latching web being disposed in said region of said second half-shell”? It would appear that the “latching device” is located outside the contour. Otherwise, what, specifically, is being defined by “contour”, “inner contour” or “region”? Nor does the specification appear complete as to an “inner contour around which said heat-expansive element is retained”. Nor is the specification clear as to “said free gap is bounded inwardly by said inner contour and said heat-expansive

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element is disposed around said inner contour". Nor is the specification clear as to "said heat-expansible element has a shape corresponding...to said free gap formed by said latched half-shells".

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, Lines 5-6, what particularly is being defined by "said latching opening being disposed within said inner contour of said first half-shell" or "said latching web being disposed in said region of said second half-shell"? The specification does not appear clear as to such limitation(s). It would appear that the "latching device" is located outside the contour. Otherwise, what, specifically, is being defined by "contour", "inner contour" or "region"?

Claim 12, what particularly is being defined by "one of said two half-shells has an inner contour around which said heat-expansible element is retained". The specification does not appear clear as to such limitation(s). How would an "inner contour" enclose the heat-expansible element? Or, how would the heat expansible element surround or enclose the inner contour? Further, is the "inner contour" recited in claim 12 the same as that introduced within claim 1?

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Claim 13, what, particularly, is being defined by “said free gap is bounded inwardly by said inner contour and said heat-expansible element is disposed around said inner contour”? The specification does not appear clear as to such limitation. It is not clear as to what, specifically, forms the inner contour.

Claim 14, what, particularly, is being defined by “said heat-expansible element has a shape corresponding...to said free gap formed by said latched half- shells”? The specification does not appear clear as to such limitation. It is not clear as to what shape, specifically, the free gap defines.

Further, it is not clear from the language of claims 1-3 and 5-8, and more particularly claims 2, 3, 6, 7, and 8, as to what specifically comprises the claimed “latching device”. Is the claimed “latching device” formed of both the latching cylinder 3 and mushroom-shaped latching element 11? Or, is the claimed “latching device” formed of only one of the latching cylinder 3 and mushroom-shaped latching element 11?

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

9. Claims 1, 2, 4, 5, and 7-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Miura et al. Miura et al. shows, Fig. 4, retaining device formed by two half-shells 12/14 and 16/11 "latched to one another" via a "latching device", col. 2, line 38 and col. 3, line 16, with an expansible shaped element 15, (or 5 as shown in Fig. 2B), of a contoured ring-like plate inserted within the retaining device. The expansible element expanding under the influence of heat.

10. Claims 1-9, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hull et al. Hull et al. shows, Fig. 2, retaining device formed by two half-shells 20 and 16 with an expansible shaped element, (seen along either side of latching means 18), of a contoured ring-like plate inserted within the retaining device. Latching devices 40/48 and 18 are disposed on inner surfaces, ("outer surface" or "outer border"?), of the half shells with element 18 possessing a mushroom-shape at 38. Latching cylinder being at 40/48.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hull et al. in view of any of Steward et al. or Tusim et al. or Doerer or Wycech.

Each of Steward et al., Tusim et al., Doerer, and Wycech teach utilization of synthetic plastic material which material is or has been expanded under the application of heat, 14 of Steward et al., col. 1, lines 38-46 of Tusim et al., col. 1, line 61 to col. 2, line 8 of Doerer, and 44 of Wycech. To have formed the expansible shaped element of Hull et al. of a synthetic plastic which takes form under application of heat, thus utilizing any one of well known synthetic plastic foam materials as the filler element, would have constituted an obvious expedient to one of ordinary skill in the art at the time the invention was made as taught by any of Steward et al. or Tusim et al. or Doerer or Wycech.

Response to Arguments

13. Applicant's arguments filed September 05, 2002 have been fully considered but they are not persuasive. Miura et al., as at col. 3, lines 12-13 or col. 2, lines 53-55, does disclose a "heat-expansible" material. Applicant argues that Miura et al. discloses a "hardened thermosetting material" and not a "heat expansible element" as recited within instant claim 1. However, the Miura et al. Expansible shaped element 15/ 5 does meet the limitation of "heat-expansible element".

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As for Applicant's argument that reference sign 57 denotes a space in Hull et al., the Office action had never alluded to reference character 57 as depicting the expansible shaped element of Hull et al. Rather, the Office action had stated that an expansible shaped element can be seen along either side of latching means 18 which element is of a contoured ring-like plate inserted within the retaining device of Hull et al. One of ordinary skill in the art would readily see the foam member depicted along either side of the latching means 18 of Hull et al, (see cross section of foam member as shown in Fig. 2 as well as Col. 1, lines 22-26 of Hull et al.). Thus, Hull et al. alone or as modified by any of Steward et al. or Tusim et al. or Doerer or Wycech does serve to read upon "heat-expansible element".

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
November 25, 2002

